



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0764]

RIN 1625-AA00

Safety Zones, St. Petersburg Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing several safety zones within the Sector St. Petersburg Captain of the Port Zone. This action will establish safety zones that restrict port operations in the event of reduced or restricted visibility, or during natural disasters, e.g. hurricanes. It will also establish safety zones around firework platforms, structures or barges during the storage, preparation, and launching of fireworks.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2014-0764. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Omar La Torre Reyes, Sector St. Petersburg Waterways Management Branch, U.S. Coast Guard; telephone (813) 228-2191, e-mail omar.latorrereyes@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

This regulatory amendment will add safety zone regulations regarding port closures due to hurricanes and other disasters, reduced or restricted visibility as well as a safety zone around all fireworks barges, structures, and piers.

We received one comment on the proposed rule. No public meeting was requested and none were held.

B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of these regulations is to ensure the safety of life on navigable waters of the United States through the addition of regulations regarding port closures in the event of hurricanes and other disasters and reduced or restricted visibility. It will establish a safety zone around all firework barges, structures, and piers.

Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the dangers involved with restricted visibility, hurricanes, and fireworks as well as the upcoming hurricane season starting June 1, it is in the best interest of the public to have a regulation in place and to not delay its effective date.

C. Comments, Changes and the Final Rule

One comment was received after the NPRM (80 FR 14335, Mar. 19, 2015) comment period closed expressing concern about potential over-regulation. Specifically, the comment relayed

that fireworks displays could be sufficiently regulated biannually; however, there are several documented fireworks displays throughout the calendar year that require barges. The comment also proposed alternative methods of regulation during hurricanes by using VTS for restricted visibility and relying on television stations to inform the public about hurricanes in order to relieve cost and burden on the taxpayer. However, the safety zones will reduce cost to the taxpayer by eliminating the need to draft a temporary final rule for each period of restricted visibility, hurricane, and fireworks event. This will significantly reduce the man hours and resources used to draft these regulations.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders. These regulations were routed through and approved by the Tampa Bay Harbor Safety and Security Committee.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3)

of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Due to the unexpected and quick nature of hurricanes and other disasters, emergency temporary final rules are implemented for each individual event. This regulation is not significant regulatory action and will reduce time and paper work since an emergency temporary final rule would not have to be implemented each time. This rule provides advance notice of actions the Coast Guard intends to take in the event a natural disaster occurs.

There are already several special local regulations establishing regulated areas around fireworks events. The safety zone that is being added is not expected to have a significant regulatory action due to the use of temporary final rules to establish safety zones for each event.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that

this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally

Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

AUTHORITY: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.781 to read as follows:

§ 165.781 Safety Zone; Hurricanes and other Disasters in Western Florida.

(a) Regulated Areas. The following areas are established as a safety zone during the specified conditions:

(1) All waters within the Sector St. Petersburg Captain of the Port zone encompassing all navigable waters or tributaries between or within Fenholloway River through Chokoloskee Pass, Florida.

(2) [Reserved]

(b) Definition. (1) *Designated Representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of regulated navigation areas, safety zones, and security zones.

(2) *Hurricane Port Condition WHISKEY* means condition set when weather advisories indicates sustained gale force winds (39-54 mph/ 34-47 knots) from a tropical or hurricane force

storm are predicted to make landfall at the port within 72 hours.

(3) *Hurricane Port Condition X-RAY* means condition set when weather advisories indicates sustained gale force winds (39-54 mph/ 34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) *Hurricane Port Condition YANKEE* means condition set when weather advisories indicate that sustained gale force winds (39-54 mph/ 34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) *Hurricane Port Condition ZULU* means condition set when weather advisories indicate that sustained gale force winds (39-54 mph/ 34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) Regulations. (1) *Hurricane Port Condition WHISKEY*. All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm upon the anticipation of the setting of Port Condition X-RAY. The PHWAG will make recommendations to the Captain of the Port to identify vessels that may need to be diverted to ensure the safety of the port. Ports and waterfront facilities shall

begin removing all debris and securing potential flying hazards. Container stacking plans shall be implemented. Waterfront facilities that, are unable to reduce container stacking height to no more than four high, must submit a container stacking protocol to the Captain of the Port (COTP).

(2) *Hurricane Port Condition X-RAY*. All vessels and port facilities shall ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Facilities shall continue to implement container stacking protocol. Containers must not exceed four tiers, unless previously approved by the COTP. Containers carrying hazardous materials may not be stacked above the second tier. All oceangoing commercial vessels greater than 500-gross tons must prepare to depart ports and anchorages within Tampa Bay. These vessels shall depart immediately upon the setting of Port Condition YANKEE. During this condition slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. A COTP Order will be issued to vessels asked to depart early. COTP orders requiring vessel departure will be considered on a case-by-case basis. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in port. Proof of facility owner/operator approval is required. Vessels with COTP's permission to remain in port must

implement their pre-approved mooring arrangement. Terminal operators shall prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways. Coast Guard Port Assessment Teams will be deployed to validate implementation of Port Condition X-RAY. The COTP will convene the Port Heavy Weather Advisory Group (PHWAG) as deemed necessary.

(3) *Hurricane Port Condition YANKEE*. Affected ports are closed to inbound vessel traffic. All oceangoing commercial vessels greater than 500-gross tons must have departed Tampa Bay. Appropriate container stacking protocol must be completed. Terminal operators must terminate all cargo operations not associated with storm preparations: cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities shall continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act (MTSA). Drawbridges may be closed to vessel traffic as early as eight hours prior to the arrival of tropical storm force winds. Coast Guard Port Assessment Teams will conduct Port Condition YANKEE validation.

The COTP will convene the Port Heavy Weather Advisory Group (PHWAG), as deemed necessary.

(4) *Hurricane Port Condition ZULU*. All port waterfront operations are suspended, except final preparations that are expressly permitted by the COTP necessary to ensure the safety of the ports and facilities. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) *Emergency Restrictions for Other Disasters*. Any natural or other disasters that are anticipated to affect the Sector St. Petersburg Captain of the Port zone will result in the prohibition of commercial vessel traffic transiting or remaining in the port and/or facility operations.

3. Add § 165.782 to read as follows:

§ 165.782 Safety Zone; Restricted Visibility in Tampa Bay.

(a) Regulated Areas. The following areas are established as safety zones during the specified conditions:

(1) Zone 1 (Interbay) means all navigable waters within a box marked by the following coordinates: 27°52'56"N, 82°29'44"W; thence to 27°52'50"N, 82°23'41"W; thence to 27°57'27"N, 82°23'50"W thence to 27°57'19"N, 82°29'39"W. This encompasses all navigable waterways north of Hillsborough Cut "C" Channel LB "25" (LLNR 23445) & "26" (LLNR 23450).

(2) Zone 2 (East Tampa/ Big Bend) means all navigable waters within a box marked by the following coordinates:

27°52'50"N, 82°23'41"W; thence to 27°46'36"N; 82°24'04"W; thence to 27°46'29"N, 82°31'21"W; thence to 27°52'59"N, 82°31'24"W.

This zone encompasses all navigable waterways between Hillsborough Cut "C" Channel LB "25" (LLNR 23445) & "26" (LLNR 23450) to Cut "6F" (LLNR 22830) Channel.

(3) Zone 3 (Old Tampa Bay) means all navigable waters within a box marked by the following coordinates: 27°46'29"N, 82°31'21"W; 28°01'58"N, 82°31'39"W; thence to 28°02'01"N, 82°43'20"W; thence to 27°46'15"N, 82°43'24"W. This zone encompasses all navigable waterways between all of Old Tampa Bay to Cut "6F" (LLNR 22830) Channel.

(4) Zone 4 (Middle Tampa Bay) means all navigable waters within a box marked by the following coordinates: 27°46'34"N, 82°34'04"W; thence to 27°38'40"N, 82°31'54"W; thence to 27°44'38"N, 82°40'44"W; thence to 27°46'15"N, 82°40'46"W. This zone encompasses all navigable waterways between Cut "6F" (LLNR 22830) Channel to Tampa Bay "1C" (LLNR 22590).

(5) Zone 5 (Lower Tampa Bay/ Manatee) means all navigable waters within a box marked by the following coordinates: 27°44'33"N, 82°40'37"W; thence to 27°58'59"N, 82°40'34"W; thence to 27°36'18"N, 82°38'57"W; thence to 27°34'10"N, 82°34'50"W; thence to 27°37'56"N, 82°31'15"W. This zone encompasses all navigable waterways between Tampa Bay "1C" (LLNR 22590) to Sunshine Skyway Bridge.

(6) Zone 6 (Mullet Key) means all navigable waters within a box marked by the following coordinates: 27°38'59"N, 82°40'35"W; thence to 27°36'44"N, 82°44'13"W; thence to 27°32'20"N, 82°44'37"W; thence to 27°31'18"N, 82°38'59"W; thence to 27°34'09"N, 82°34'53"W; thence to 27°36'15"N, 82°39'00"W. This zone encompasses all navigable waterways between the Sunshine Skyway Bridge to Mullet Key Channel LB "21" (LLNR 22365) & "22" (LLNR 22370).

(7) Zone 7 (Egmont Entrance) means all navigable waters within the area encompassed by the following coordinates: 27°36'27"N, 82°44'14"W; thence to 27°39'46"N, 82°44'45"W; thence to 27°39'36"N, 83°05'10"W; thence to 27°32'29"N, 83°04'50"W; thence to 27°32'21"N, 82°44'42"W. This zone includes the fairway anchorages.

(8) All coordinates are North American Datum 1983.

(b) Definition. (1) *Designated Representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of regulated navigation areas, safety zones, and security zones.

(2) [Reserved]

(c) Regulations. (1) Vessel should not commence an inbound, shift, or outbound transit during periods where

visibility is less than one nautical mile due to fog or inclement weather.

(2) The COTP may open or close Tampa Bay or specific zones to vessel traffic described in the regulated areas section of this chapter.

4. Add § 165.783 to read as follows:

§ 165.783 Safety Zone; Firework Displays in Captain of the Port Zone St. Petersburg, Florida.

(a) Regulated Area. The following area is established as a safety zone during the specified conditions: All waters within the Sector St. Petersburg COTP Zone up to a 500-yard radius of all firework platforms, structures or barges during the storage, preparation, and launching of fireworks. Designated representatives may reduce the 500-yard zone based on prevailing conditions and enforcement needs.

(1) The Coast Guard realizes that some large scale events, such as those with many participants or spectators, or those that could severely restrict navigation or pose a significant hazard, may still require separate special local regulations or safety zones that address the specific peculiarities of the event. In those situations, the Coast Guard will create special local regulations or safety zones specifically for the event. Those regulations will supersede the regulations in this section.

(2) All firework platforms, structures or barges will also have a sign on their port and starboard side labeled "FIREWORKS - STAY AWAY". This sign will consist of 10-inch high by 1.5-inch wide red lettering on a white background. Shore fireworks site that affect navigable waterways will display a sign with the aforementioned specifications.

(b) Definitions.

Designated Representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of regulated navigation areas, safety zones, and security zones.

Captain of the Port (COTP) for the purpose of this section means the Commanding Officer of Coast Guard Sector St. Petersburg.

Captain of the Port St. Petersburg Zone is defined in 33 CFR 3.35-35.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Coast Guard Captain of the Port St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit

through, anchor in, or remain in the regulated area may contact the Captain of the Port St. Petersburg via telephone at (727)-824-7506, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(3) The Coast Guard will provide notice of the regulated area via Broadcast Notice to Mariners or by on-scene designated representatives. Fireworks platforms, piers, and structures will also have signs to notify the public of the danger and to keep away.

(4) This section does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: June 2, 2015

G. D. Case,
Captain, U.S. Coast Guard,
Captain of the Port

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6/26/2015]